

#121



S/N 09/477,977

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	John H. Burton et al.	Examiner:	R. Kearney
Serial No.:	09/477,977	Group Art Unit:	3739
Filed:	January 5, 2000	Docket:	825.001US2
Title:	IMPLANTABLE DEVICE AND METHOD FOR ADJUSTABLY RESTRICTING A BODY LUMEN		

REPLY BRIEF TO EXAMINER'S ANSWER

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant has reviewed the Examiner's Answer and respectfully submits the following comments:

Notwithstanding the Examiner's Answer, it is respectfully submitted that the recited subject matter is not provided by Hickey et al. The remarks of Page 4 relate to the word "implant," however, claim 1 recites more than "implant." Appellant respectfully submits that the discussion of claim 1 in the appeal brief relates to a device that is adapted for implantation into body tissue as recited in claim 1. Claim 1 recites, among other things:

1. An implantable device, comprising:

a pressurizable expandable element . . . ;

wherein the implantable device is adapted for implantation within body tissue with the expandable element adjacent a body lumen to provide volume to the body tissue for adjustable coaptation of the body lumen.

The specification supports the recited subject matter. For example, Appellant notes that FIG. 6 shows an expandable element 12 positioned adjacent a body lumen 32, according to one embodiment and one possible use of the present invention. Appellant respectfully submits that

REPLY BRIEF TO EXAMINER'S ANSWER

Serial Number: 09/477,977

Filing Date: January 5, 2000

Title: IMPLANTABLE DEVICE AND METHOD FOR ADJUSTABLY RESTRICTING A BODY LUMEN

Page 2
Dkt: 825.001US2

the device of Hickey et al. is not an appropriate substitute and does not provide the recited limitations of claim 1. For example, Hickey et al. does not provide an expandable element adjacent a body lumen. Furthermore, it is respectfully submitted that Hickey et al. would not be used as shown in FIG. 6 and as described by the present specification.

Appellant respectfully submits that the defects in Hickey et al. substantiate the lack of motivation to combine Hickey et al. and Whitehouse.

Appellant respectfully submits that the remaining comments are already addressed by the Appeal Brief and distinguish the recited subject matter over the rejections and the present comments.

Reconsideration and withdrawal of the rejection are again respectfully requested, or if the matter should proceed to appeal, an order from the Board of Patent Appeals and Interferences withdrawing the rejection is respectfully requested.

Respectfully submitted,


JOHN H. BURTON ET AL.

By their Representatives,


SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
612-373-6912

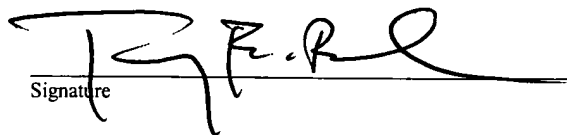
Date July 7, 2003

By


Timothy E Bianchi
Reg. No. 39,610

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O.Box 1450, Alexandria, VA 22313-1450 on this _____ day of July, 2003.


Name


Signature